

A license of canned software is subject to Retailers' Occupation Tax liability if all of the criteria set out in 86 Ill. Adm. Code 130.1935(a)(1) are not met. (This is a GIL.)

April 13, 2006

Dear Xxxxx:

This letter is in response to your letter dated February 23, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting a private letter ruling on the taxability of our canned software that we sell. We are a computer hardware and software retailer. Our Master Agreement [sic] are for the sales of hardware and software which is taxable as a retail sale under the Retailer's Occupations [sic] Tax Act. 86 Ill. Adm. Code 130.1935(a).

It has been brought to our attention that there is an issue with the taxability of the software we sell to our clients. Our Client asserts that the master agreement is for the licenses of software which would make it not taxable because it meets the five requirements stated in Sec. 130.1935 (a)(1). We claim that our agreement is for the sale of our software because the system, including the software that they purchase, becomes the property of the client when they have fulfilled their contractual obligations.

Our view is the software license is also subject to sales tax because it is part of the sale of the software and we do not require our customers to destroy or return the software after the license period has expired. This does not meet the requirement as set forth in subsection (E) of Illinois Regulation 86Ill. Adm Code 130-1935.

We have been audited by that [sic] State of Illinois for sales tax compliance and this matter was not addressed by our Auditor.

We would like to have the state review our contract and give us a private letter ruling to clarify this issue. Please find enclosed a copy of one of our Master Agreements. Is our sale of canned software taxable?

Thank you for your prompt response to this very important tax matter. Please contact me with any questions that you might have on this matter. Please send you [sic] written response to my attention at the address above.

#### **DEPARTMENT'S RESPONSE:**

Generally, sales of "canned" computer software are taxable retail sales in Illinois. Sales of canned software are taxable regardless of the means of delivery. For instance, the transfer or sale of canned computer software downloaded electronically would be taxable.

If transactions for the licensing of computer software meet all of the criteria provided in subsection (a)(1) of Section 130.1935, neither the transfer of the software nor the subsequent software updates will be subject to Retailers' Occupation Tax. A license of software is not a taxable retail sale if:

- A) It is evidenced by a written agreement signed by the licensor and the customer;
- B) It restricts the customer's duplication and use of the software;
- C) It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- D) The licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and
- E) The customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

Your letter request and the supporting documentation indicate that the customer is not required to destroy or return all copies of the software at the end of the license period. In addition, we have found no evidence that the license agreement grants a perpetual license to the customer. A license of canned software is subject to Retailers' Occupation Tax liability if all of the criteria set out in 86 Ill. Adm. Code 130.1935(a)(1) are not met. Therefore, the transfer of software under the software license agreement submitted with your letter request, and any subsequent software updates will be subject to Retailers' Occupation Tax.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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